

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STATE OF NEW JERSEY,

Plaintiff,

V.

UNITED STATES DEPARTMENT OF
TRANSPORTATION, *et al.*,

Defendants,

and

METROPOLITAN TRANSPORTATION
AUTHORITY, *et al.*,

Defendant-Intervenor.

No. 23-3885 (LMG-LDW)

DEFENDANTS' NOTICE OF ISSUANCE OF RE-EVALUATION 2 AND VALUE PRICING PILOT PROGRAM AGREEMENT

Defendants¹ file this notice to inform the Court regarding the issuance of a second re-evaluation (“Re-Evaluation 2”) and Value Pricing Pilot Program (“VPPP”) agreement, and to provide their position on the status of the litigation and the relevance of those documents to the claims currently pending before the Court.

On November 8, 2024, the Project Sponsors² for the Manhattan Central Business District Tolling Program (“the Project”) requested that the Federal Highway Administration (“FHWA”)

¹ Defendants are the U.S. Department of Transportation, the Federal Highway Administration, Shailen Bhatt, in his official capacity as Administrator of FHWA, and Richard J. Marquis, in his official capacity as Division Administrator of the New York Division of FHWA.

² The Project Sponsors are the Metropolitan Transportation Authority, the New York Department of Transportation, and the New York City Department of Transportation.

proceed with assessing the effects of a phased-in tolling structure to complete the on-going re-evaluation of FHWA's May 5, 2023, Final Environmental Assessment ("EA"). On November 21, FHWA issued Re-Evaluation 2 finding that the conclusions in the Final EA and FONSI remain valid in light of the most recent tolling schedule adopted by the Triborough Bridge and Tunnel Authority Board ("TBTA"), and thus that no further environmental review is warranted.³ Also on November 21, the Project Sponsors and FHWA officials signed the VPPP agreement.

Defendants respectfully proffer that issuance of Re-Evaluation 2 and the VPPP agreement does not meaningfully change the status of the claims in this case. Plaintiff does not challenge any re-evaluation of the EA or the VPPP agreement. *See Mulgrew v. U.S. Dep't of Transp.*, No. 24- 1644, 2024 U.S. Dist. LEXIS 110041, at *104-105 (S.D.N.Y. June 20, 2024) (treating allegations about the re-evaluation separately from challenges to the validity of the EA and Finding of No Significant Impact ("FONSI")). Instead, Plaintiff's lawsuit solely challenges FHWA's 2023 issuance of the Final EA and FONSI under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331 *et seq.* *See* Compl. ¶¶ 123-158. To that end, when Defendants previously notified this Court of an earlier re-evaluation of the Central Business District Tolling Program, ECF No. 156, they expressed their position that "the Court can order meaningful relief with respect to Plaintiff's claims" and that the court "should resolve the pending cross-motions for summary judgment..." *Id.* at 2. Defendants' position remains the same, given the Re-

³ The Re-Evaluation 2 is available on MTA's website at <https://new.mta.info/project/CBDTP/reevaluation2-and-vppp-agreement>. Defendants provide this notice in compliance with the Court's request to provide updates upon completion of the re-evaluation process. *See* Apr. 4, 2024 Tr. 15:5-8. In doing so, Defendants do not concede that the Re-Evaluation 2 is part of the administrative record before the Court. *See Del. Dep't of Nat. Res. & Env't Control v. U.S. Army Corps of Eng'rs*, 722 F. Supp. 2d 535, 542 (D. Del. 2010) ("The focus of the APA review is, of course, the administrative record that existed at the time of the challenged agency action.").

Evaluation 2 merely again confirms the results of the Final EA and FONSI. Accordingly, the Court may rule on Plaintiff's claims in the normal course. *See, e.g., Sierra Club v. Fed. Energy Regul. Comm'n*, 827 F.3d 36, 45 (D.C. Cir. 2016).

Respectfully submitted this 22nd day of November, 2024,

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Environment & Natural Resources Division

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